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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re K.M., a Person Coming
Under the Juvenile Court Law.

B292352

(Los Angeles County
Super. Ct. No.
18CCJP04174A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

S.D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los
Angeles County. Philip L. Soto, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Aileen Wong, Senior Deputy County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, the juvenile court declared 18-month-old K.M. (son) a dependent of the court based on both his mother's and his father's conduct. Son's mother, appellant S.D. (mother), challenges the juvenile court's jurisdictional findings based on her conduct. In particular, mother argues substantial evidence does not support the court's findings that her violent altercation with son's father or her marijuana use placed son at substantial risk of physical harm.

Son's father, D.M. (father), has not filed an appeal challenging the court's jurisdictional findings based on his conduct, which also included the violent altercation with mother and his own drug use. Because father has not challenged the court's findings as to him, respondent Los Angeles County Department of Children and Family Services (Department) argues mother's appeal is not justiciable because dependency jurisdiction will remain regardless of our decision in mother's appeal. In any event, the Department argues substantial evidence supports the jurisdictional findings based on mother's conduct.

As discussed below, we exercise our discretion to address mother's appeal. However, because we conclude substantial evidence supports the jurisdictional finding based on mother's marijuana abuse, we decline to address the jurisdictional findings

as to mother based on the parents' violent altercation. Accordingly, we affirm.

BACKGROUND

1. Events Preceding Dependency Petition

Prior to these proceedings, mother and father had been in a relationship for three years. Mother, father, and son lived together at the maternal grandmother's home. A few months before the Department's involvement with the family and due to allegations of cheating on both sides, mother and father ended their relationship. However, father continued to reside at maternal grandmother's home because the parents "were attempting to co-parent under the same roof." Eventually, however, in May 2018 things between mother and father deteriorated, they were not communicating, and father moved out of maternal grandmother's home.

a. *June Incident*

Soon after, in early June 2018 when son was a little over one year old, father called the police following a physical altercation he had with mother. When interviewed about the incident, mother and father told very different stories. Father told the police mother had asked him to meet her at a church or a park so they could discuss their relationship, which was suffering under suspicions and allegations of cheating. Father met mother at the specified location, where mother and three men were waiting. Mother argued with father. Eventually, she and the three men began punching father. Father said he was on the ground being punched and kicked for approximately five minutes. After the punching and kicking stopped, father stated he saw mother approach him with a baseball bat. Father ran to his car but before he could drive away, mother hit the rear window of the

car twice, causing damage. Father drove away from the scene, called the police, and met them in front of maternal grandmother's home. Although father complained of pain on the right side of his head, he had no visible injuries and declined medical assistance. The police were unable to find evidence or witnesses in the area.

The police reported the incident to the Department "due to [father] and [mother] having a child in common." Although the police reported son "was at the location of the incident," the police further specified son was believed not to be "outside where the incident happened, but he was inside of the home of the incident location."

b. *Department Investigation*

As a result of the referral, the Department opened an investigation. A Department social worker interviewed mother. Mother described the June incident very differently. Mother told the social worker that on the evening of the altercation, she and a friend were at a liquor store when father appeared. Father confronted mother, punched her several times in the face, and pulled out one of her earrings. Mother reported her lip was injured in the altercation. Mother told the social worker three men at the liquor store tried to help mother during the physical altercation, at which point she and her friend got in her friend's car and drove away. Mother denied anyone at the scene vandalized father's car. Mother also said she did not go home right after the altercation because she was worried father might go there.

Mother told the social worker she and father had never been in a physical altercation before and she no longer wanted to

co-parent with father or have him visit son. Mother denied using any substances, including alcohol and marijuana.

The Department social worker also interviewed maternal grandmother. Maternal grandmother told the social worker she was not present during the altercation between mother and father, but mother had told maternal grandmother about it. Mother told maternal grandmother that father had followed her to a liquor store, where he attacked her, hitting her in the face, and some men intervened to help. Maternal grandmother said she was at home with son when the incident occurred. She also stated that although mother and father had verbal arguments in the past, she had never seen them engage in a physical argument. Maternal grandmother did not know whether either mother or father used drugs. Maternal grandmother told the social worker she had no concerns for son in the care of either mother or father.

The social worker also observed son at the maternal grandmother's home, where he was playing happily during the interviews. The social worker reported no concerns with respect to son or the home environment.

When the Department social worker interviewed father about the June incident, father told yet another story. This time, father stated mother had called him, saying "her new significa[nt] other wanted to fight him." Father told the social worker "he did not want [mother] nor the new significant other to think that he was a 'punk' so he went to the location," which father said was the new significant other's home. Father reported that when he arrived, mother, two males and a female "jumped" him and hit and kicked him for a few minutes. Father said he escaped to his car, but mother smashed the rear window

before he left. When the social worker pointed out differences in father's story as he reported it to the police versus as he reported it to her, father stated he met mother the night of the incident both to discuss their relationship (as he had reported to the police) as well as because mother's new significant other wanted to fight him (as he had told the social worker). Father was adamant they had not met at a liquor store, he did not attack mother, and mother and her friends had attacked him. He called the police because he wanted them to help have mother pay for the broken car window.

During his interview with the social worker, father denied abusing any drugs, although he stated he enjoyed drinking beer and had been drinking more in light of his current problems with mother. Father told the social worker mother "smokes marijuana daily" and "smokes so often that she does not care for [son]." Father indicated maternal grandmother "is normally watching [son] while [mother] is out smoking with friends." The Department also noted father's extensive criminal record, which included, among other things, multiple arrests and one conviction for domestic violence against other women, but not against mother.

Both mother and father agreed to drug test for the Department. Mother's test was positive for cannabinoids; father's test was positive for amphetamine and methamphetamine. When asked about her positive test result, mother stated she started smoking marijuana a few months earlier for severe headaches and only did so when son was at daycare. She said she smoked at least three times a week. When father was confronted with his positive test results, he continued to deny that he used any illicit substances.

In late June 2018, the juvenile court granted the Department's request for a removal order, removing son from father.

2. Dependency Petition

In early July 2018, the Department filed a four-count petition under Welfare and Institutions Code section 300, subdivisions (a) and (b)(1)¹ on son's behalf (petition). Count a-1 alleged son was at substantial risk of nonaccidental harm as a result of his parents' June altercation. Count b-1 was identical to count a-1 and alleged son was at substantial risk of serious harm as a result of the June incident. Counts a-1 and b-1 also included an allegation related to father's criminal conviction for domestic violence. Counts b-2 and b-3 alleged mother's marijuana (count b-2) and father's methamphetamine and amphetamine use (count b-3) combined with son's young age placed son at risk of serious harm.

At the detention hearing, the juvenile court found son was a person described by section 300 and ordered him removed from father and released to mother under Department supervision and on the conditions that mother reside with maternal grandmother and continue drug testing for the Department.

3. Adjudication and Disposition

A combined adjudication and disposition hearing was held on August 29, 2018.

a. Department's Report

Prior to the hearing, the Department submitted its jurisdiction and disposition report to the court. A Department social worker had interviewed mother again. Mother gave the

¹ Undesignated statutory references are to the Welfare and Institutions Code.

social worker additional details about the June incident. Mother stated father had approached three of her friends who were waiting for mother outside the liquor store. When mother came out of the liquor store, father hit her and ripped her earring out of her ear. After mother got in her friend's car, father hit her again through the open window and cut her lip.

In the meantime, mother's friend Sierra G. went to the liquor store looking for mother but found father. Father attacked Sierra and broke the door handle on her car. Mother said she returned to the liquor store to help Sierra, but instead fought with father, each of them hitting the other. Some men at the liquor store intervened and told father to leave. Mother told the social worker that father got into his car but did not leave. When mother left the liquor store and went to her friend's house, father followed them and circled the area in his car. Mother heard from friends that father had crashed his car while circling the area. At one point, mother threw a rock at father's car as he drove past her friend's house, shattering the back window. Mother said father then drove to the police station "to 'make allegations.' " Finally, mother stated father ended the night sleeping in his car in front of maternal grandmother's house. Mother told the social worker that the following morning, maternal grandmother gave father money and asked him to leave. Father left and again crashed his car, which was impounded by police.

Mother reiterated that son was not present during her altercation with father but had been with maternal grandmother. Mother also stated the June incident was the first instance of domestic violence in her relationship with father and she did not have a history of domestic violence in past relationships.

With regard to the allegations of substance abuse, mother told the social worker she smoked marijuana “to address epidural spinal migraines” following son’s birth. Although mother said she originally had taken a prescribed pain medication, she was unable to breast feed son while doing so. As a result, she decided to smoke marijuana instead and to manage the pain on her own. Mother said she smoked approximately three times a week and only when son was at daycare. She denied being under the influence when son was in her care, smoking in maternal grandmother’s house, or storing marijuana in the home. Nonetheless, the social worker noted mother’s bedroom—which she shared with son at maternal grandmother’s home—smelled of marijuana. Mother agreed the bedroom smelled, but she believed “it smelled ‘like feet.’ ”

The social worker also interviewed maternal grandmother. Maternal grandmother indicated she usually was home to help mother care for son. Maternal grandmother told the social worker she had no concerns for son in the care of either mother or father and she had never seen or heard mother and father argue or fight. Maternal grandmother was unaware of any substance abuse by mother.

With respect to the June incident, maternal grandmother did not know exactly what happened. She said son had been in her care that day. She told the social worker both mother and father had called her following their altercation. At one point later that evening, maternal grandmother saw father in front of her home “with the police because he wanted his car window to be fixed.” Maternal grandmother explained that the morning after the June incident, father returned to her home, she gave him money for food and gas, and he left.

The social worker also spoke with mother's friend Sierra, who told the social worker more about the June incident. Sierra said maternal grandmother had called her and told her father was harassing mother. Sierra located mother at a friend's house, where father showed up soon after. Sierra stayed in her car in front of the friend's home. Father tried to attack Sierra through the car's sunroof and damaged her car. Sierra said father threw things at her car, including a glass bottle that broke the car door handle. Sierra also told the social worker father tried "to put the mother in a headlock and was pushing and shoving her," but mother did not physically harm father, and Sierra did not see anyone intervene to stop the fighting. Sierra explained father "kept coming and going to the property, harassing them for approximately 30 minutes." Sierra thought father might have been on drugs at the time, but she was not sure. She also said son was not present during the June incident.

Sierra told the social worker that although mother and father sometimes argued over the telephone, Sierra had never seen them in a physical altercation before the June incident. However, Sierra noted mother previously had mentioned that a couple times father " 'pushed her and she would fall down.' " Sierra did not know whether those instances happened before or after son was born. Sierra never saw marks or bruises on either mother or father.

With respect to mother's alleged substance abuse, Sierra told the social worker mother smoked marijuana. Sierra stated, " 'Well I smoke every day, all day so I'm sure [mother] does too. We both have the tolerance for it. So, literally from the time she wakes up 'til the time she goes to sleep.' . . . 'When I'm smoking with her, [son is] not around but I'm not sure when she's by

herself. But I would assume she does because the baby does have a coughing problem. The baby does cough a lot. As far as when she's around me, no she doesn't smoke around her baby but, when she's by herself, I'm not sure.' ” Sierra expressed two concerns for son; namely, he suffered from eczema and was often in dirty clothes and a dirty diaper. Sierra said, “ ‘Every time I see him, he's in dirty clothes and diapers. It's like he hasn't been changed in hours.’ ”

The social worker was unable to interview father prior to adjudication.

In its report to the juvenile court, the Department stated that although son was not present during the June incident, the Department was concerned with “the parents' lack of impulse control,” their varying descriptions of the June incident, father's history of domestic violence with other females, and both parents' initial denial, and then minimizing, of their drug use. In a last minute information for the court, the Department reported “mother has taken adequate care of [son] and has ensured that [son]'s basic needs are met, as well as provided a loving home for [son],” and “mother has been cooperative with Court orders . . . and . . . has taken the initiative to request parenting resources.”

b. *Hearing*

At the adjudication hearing, son's counsel argued mother should not be found to be an offending parent in the a-1 and b-1 counts, which addressed the June incident. As to count b-2, which addressed mother's marijuana use, son's counsel claimed there was a “lack of nexus” and the juvenile court could not sustain that count. Mother's counsel joined in son's position, arguing the juvenile court should strike mother from the a-1 and b-1 counts (regarding the June incident) and strike the b-2 count

(regarding mother's marijuana use) entirely. On the other hand, counsel for the Department urged the court to sustain the petition as pleaded. The Department believed mother's participation in the June incident was "a problem especially when it comes to your judgment when you have a child." The Department also argued the evidence supported the allegations of substance abuse against mother.

After hearing argument, the juvenile court sustained the petition as pleaded and declared son a dependent of the court under section 300, subdivisions (a) and (b)(1). The court removed son from father and placed son with mother under Department supervision and on the condition that mother reside with maternal grandmother or other location approved by the Department.

The juvenile court ordered family maintenance and preservation services for mother and family enhancement services for father. In addition, mother was ordered to take six consecutive drug tests. If she missed any or any came back positive, mother would be required to participate in a full drug program with further testing.

4. Appeal

Mother appealed the juvenile court's August 29, 2018 order.

DISCUSSION

1. Justiciability

The Department argues we should not reach the merits of mother's appeal because, regardless of our decision, dependency jurisdiction still would exist due to the juvenile court's unchallenged findings with respect to father. Despite jurisdiction based on father's conduct, mother argues we should address the merits of her appeal because the findings against her have the

potential to impact these and future dependency proceedings. Mother also claims her due process rights are at issue. As explained below, we consider mother's appeal.

Both parties recognize that because dependency jurisdiction based on father's conduct has not been challenged, dependency jurisdiction remains regardless of our decision on mother's appeal. "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) "Because the juvenile court assumes jurisdiction of the child, not the parents, jurisdiction may exist based on the conduct of one parent only." (*In re J.C.* (2014) 233 Cal.App.4th 1, 3.)

Nonetheless, if jurisdictional findings based on mother's conduct could prejudice her in this or future proceedings, we have discretion to consider those findings even if jurisdiction would remain based on father's conduct. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716; *In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.) Although the Department argues otherwise, the findings concerning mother could affect her in the instant dependency proceedings which remain pending below. The Department notes son has remained in mother's care throughout these proceedings and, therefore, according to the Department, whether mother is found to be offending or nonoffending "does not affect mother's custody rights." This is not entirely accurate. Although the juvenile court has maintained son in mother's care, son's release to mother is not without restrictions. Specifically,

the juvenile court has permitted son to remain with mother under Department supervision on the condition that mother reside with maternal grandmother or another location approved by the Department. We exercise our discretion to consider mother's appeal.

2. Jurisdiction

a. *Standard of Review*

We review the juvenile court's jurisdictional findings for substantial evidence. (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119.) We will affirm if there is reasonable, credible evidence of solid value to support the court's findings. (*Ibid.*)

“ ‘ “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.” ’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Under this standard, our review “ ‘ begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.’ ” (*In re David H.* (2008) 165 Cal.App.4th 1626, 1633.) “We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court

might have reached a different result had it believed other evidence.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

However, “ ‘substantial evidence is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, “[w]hile substantial evidence may consist of inferences, such inferences must be ‘a product of logic and reason’ and ‘must rest on the evidence’ [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].” [Citation.] “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” ’ ” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) “ ‘[I]f the word “substantial” [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with “any” evidence. It must be reasonable . . . , credible, and of solid value’ ” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633; *In re I.C.* (2018) 4 Cal.5th 869, 892.)

**b. Count Based on Mother’s Substance Abuse
(Count b-2)**

Mother argues substantial evidence does not support the juvenile court’s jurisdictional finding based on her marijuana use. In particular, and despite son’s tender years, mother claims there is no causal connection between her marijuana use and any risk of harm to son. We disagree.

With respect to mother’s drug use, the juvenile court based its exercise of jurisdiction on section 300, subdivision (b)(1). Under that subdivision, a juvenile court may assert dependency jurisdiction over a child when “[t]he child has suffered, or there is

a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b)(1).) For children of “ ‘such tender years,’ ” such as son here, “ ‘the absence of adequate supervision and care poses an inherent risk to their physical health and safety.’ ” (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 767.)

“The legislatively declared purpose of these provisions ‘is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*’ (§ 300.2, italics added.) ‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) “ ‘The purpose of dependency proceedings is to prevent risk, not ignore it.’ ” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.)

Although mother stated she did not smoke marijuana when caring for son or when in maternal grandmother's home, other evidence supported the opposite conclusions. For example, Sierra indicated mother smoked marijuana all day every day and although Sierra had never seen mother smoke in front of son, Sierra believed she did. Sierra also noted son had a cough, which Sierra attributed to mother smoking marijuana in son's presence. In addition, when visiting maternal grandmother's home, a Department social worker believed mother's bedroom, which

mother shared with son, smelled of marijuana. Finally, according to father, mother “smoke[d] marijuana daily” and “smoke[d] so often that she does not care for [son].” We do not reweigh the evidence or evaluate witness credibility. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 228.) “The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.” (*Ibid.*)

In cases such as this involving a child of tender years, “the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm.” (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 767.) Thus, although disputed by mother, we hold substantial evidence supports the juvenile court’s finding of jurisdiction based on mother’s marijuana abuse (count b-2).

c. *Counts Based on June Incident and Father’s Domestic Violence Against Others (Counts a-1 and b-1)*

Because we conclude dependency jurisdiction was proper under count b-2, we need not and do not reach the remaining counts, both of which include allegations of mother’s role in the June incident. A single basis for asserting dependency jurisdiction over son is sufficient to sustain the juvenile court’s exercise of that jurisdiction. (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451; *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 [“As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate”].) We decline mother’s invitation to exercise our discretion to address those remaining counts.

DISPOSITION

The August 29, 2018 order is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.